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Agenda item 10

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by Service, Peace and Justice in Latin America, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[20 January 1992]

SERVICE, PEACE AND JUSTICE IN LATIN AMERICA submits the following communication to the Commission on Human Rights at its forty-eighth session for consideration under agenda item 10 and requests the Commission to have it circulated as an official document.

1. Concerned at the consequences which the impunity enjoyed by those responsible for human rights violations has for the consolidation of the democracies recovered by our peoples;

2. Noting that the impunity with which these crimes are allowed to take place is a threat to the entire universal system for the protection of human rights owing to non-compliance with the standards governing that system on the part of States that do not investigate the acts committed and do not prosecute and convict those responsible but on the contrary promote laws and mechanisms

whereby the perpetrators of such violations are able to enjoy impunity. Accordingly, in its report to the forty-sixth session of the Commission (E/CN.4/1990/13), the Working Group on Enforced or Involuntary Disappearances gave special attention to impunity as a major factor in the continuance of the phenomenon of enforced disappearances. Similarly, the participants in the Latin American Seminar of Experts on Human Rights, Democracy, Economic and Social Development organized by the Centre for Human Rights in Santiago, Chile, in December 1991, expressed the wish that a special effort be made to deal once and for all with the ethical, legal, political and social problem of the impunity enjoyed by violators of human rights;

3. Considering that the discussion and examination of the question of impunity by the agencies of the system should not result solely in the incorporation of standards that prevent the crimes of State terrorism from going unpunished, but should also address the structural causes underlying the emergence of regimes or systems that not only place in jeopardy the essence of life itself but also shape a world whose values are such that human beings are made to forfeit their central position for the sake of political and social systems that benefit a small section of society, relegating the bulk of the population to the sidelines. As the first group usually enjoys impunity, so the second group is made to suffer inordinately from all the rigours of the law: these are two aspects of the same reality;

4. Bearing in mind that in those countries where laws have been passed that grant impunity to those responsible for serious crimes, harsh economic and social policies have been implemented that affect the most vulnerable sections of society, thus generating social conflicts, which are quelled through the increasingly severe curtailment of individual and collective freedoms, which goes hand in hand with the introduction or continuation of repressive practices on the part of the security forces, in breach of international commitments, and higher rates of corruption and criminality among government officials, so that, in society at large, there is no longer any faith in the workings of democracy;

5. Bearing in mind also that impunity legislation deprives the victims' relatives of the right to know the truth, a right recognized as forming part of customary international law and the humanitarian international law of armed conflicts. The Symposium held in Paris in January and February 1981 on the policy of enforced disappearance of persons, concluded that the recognized rights of the relatives and close friends of victims in peacetime should be greater or at least equal to those recognized in wartime, in accordance with the Geneva Conventions. That the above-mentioned right has also been recognized by the Inter-American Court of Human Rights in the ruling handed down in the case of the disappearance of a citizen of the State of Honduras; And that the Working Group on Enforced or Involuntary Disappearances has said that it "finds it hard to accept that a consequence - de facto or de jure - of some of these measures (namely pardon or amnesty) is to prevent investigations being made into the fate or whereabouts of the missing persons";

6. Considering further the general obligation of all the States, Parties to international treaties, to respect and guarantee the human rights of all individuals subject to their jurisdiction whenever a recognized right is violated, and that a State which does not investigate and punish the violation, is in breach of an international undertaking;

7. Bearing in mind that there is a growing tendency in international law to place upon States the obligation to punish certain categories of crimes whenever they are committed, reflected, for example, in Articles IV and V of the Convention on the Prevention and Punishment of the Crime of Genocide, Article IV of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article IV of the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Article IV of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;

8. Considering further that the structures of the judicial authorities in several of our countries were not abolished upon the establishment of democracy and constitute one of the major obstacles to elucidating what actually occurred during the period of systematic, wholesale violation of human rights and that these structures are a buttress to the political bodies in their decision to mark the end of the previous periods by means of impunity legislation. At the above-mentioned Seminar of Experts it was felt to be necessary to promote policies concerning the administration of justice that would include resolute action in respect of those economic, social and cultural factors that help to generate violence, together with the modernization of the judiciary, its auxiliary bodies and the special protection agencies;

9. Considering also the untiring efforts being made by individuals and organizations working on behalf of human rights throughout the world to highlight and combat the causes of impunity and its consequences for democracy to which peoples aspire;

10. We support Sub-Commission decision 1991/110 requesting Mr. El Hadji Guissé and Mr. Louis Joinet to draft a working paper on the question of impunity and we undertake to contribute material and give our views on matters relating thereto;

11. We therefore propose to the Commission on Human Rights:

(a) That at the present session, it should consider issuing initial guidelines on the question of impunity, concerning for example:

(i) The compatibility or incompatibility of the impunity rules (amnesty, pardon, or other ways in which the State renounces its obligation to administer justice) with the international standards by virtue of which States are required to sanction and punish those responsible for crimes against humanity;

(ii) The non-applicability of statutory limitations to such crimes;

(iii) The retroactivity of standards that disallow impunity;

(b) That at its present session it should adopt the draft declaration on the protection of all persons from enforced or involuntary disappearances, and thus contribute to strengthening the rights and freedoms proclaimed in the Universal Declaration of Human Rights and the principles and purposes of the Charter of the United Nations;

(c) That it should give impetus to the work undertaken towards the preparation of a convention that will define and punish the crime of enforced disappearance;

(d) That at the World Conference on Human Rights to be held in Berlin in 1993, these subjects should be the main topics of discussion, making it essential for non-governmental human rights organizations to participate in and contribute to both the Conference itself and the preparations for it.